

# EXHIBIT A

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3 **UNITED STATES DISTRICT COURT**  
4 **FOR THE DISTRICT OF NEW JERSEY**  
5 **CAMDEN VICINAGE**  
6

7 **IN RE: VALSARTAN, LOSARTAN, AND**  
8 **IRBESARTAN PRODUCTS LIABILITY**  
9 **LITIGATION**

MDL No. 2875

Honorable Robert R. Kugler,  
District Court Judge

Oral Argument Requested

10  
11 This Document Relates to All Actions  
12

13 **DECLARATION OF MARK A. FISH**

14 **IN SUPPORT OF DEFENDANT'S**  
15 **MEMORANDUM OF LAW IN**  
16 **OPPOSITION TO PLAINTIFFS'**  
17 **MOTION FOR APPROVAL OF FORM**  
**AND MANNER OF CLASS NOTICE**

18 I, Mark A. Fish, declare as follows:

19 1. I am a Senior Managing Director in the Health Solutions Practice of FTI  
20 Consulting. I respectfully submit this declaration in support of Defendant's Memorandum of  
21 Law in Opposition to Plaintiffs' Motion for Approval of Form and Manner of Class Notice.

22 **MY BACKGROUND**

23 2. I have 30 years of experience working in various managed care and health plan  
24 actuarial, finance, network, and operations positions. My CV is attached as **Attachment 1**. My  
25 relevant education and work experience are described below.

26 3. In 1988 I received my Bachelor of Business Administration, Actuarial Science

1 and Mathematics from the University of Wisconsin. I am a Fellow in the Society of Actuaries  
2 and Member of the American Academy of Actuaries.

3 4. I am currently a Senior Managing Director in the Health Solutions Practice of FTI  
4 Consulting, an independent global business advisory firm dedicated to helping organizations  
5 manage change, mitigate risk and resolve disputes: financial, legal, operational, political, and  
6 regulatory. I have a deep understanding of the healthcare insurance marketplace, including  
7 actuarial, finance and operations and the interactions between providers, health plans, pharmacy  
8 benefit managers (“PBMs”), employers and individuals.

9 5. Prior to joining FTI Consulting, I served as the Chief Financial Officer (“CFO”)  
10 at MVP Health Care (“MVP”), a regional health plan of 750,000 members operating in three  
11 states. As CFO, I was also member of the Executive Leadership Team. I worked at MVP for  
12 over 14 years. In addition to CFO, I held several roles at MVP including various leadership  
13 positions, such as Chief Actuary, Vice President of Finance, Executive Vice President of  
14 Network Management (“EVP”), and EVP of Medical Affairs.

15 6. Prior to MVP, I also worked as a Consulting Actuary at Milliman for nearly three  
16 years and a Regional Pricing Actuary at Aetna for almost eight years.

17 **MY INVOLVEMENT IN THIS MATTER**

18 7. Counsel for the Defendants retained me in this matter. I have been asked to  
19 analyze the contents of a proprietary listing prepared by Angeion Group, LLC consisting of  
20 approximately 28,500 mailing addresses (the “Mailing List”) and to identify those addresses, if  
21 any, pertaining to third party payors (“TPPs”). For my purposes, it is my understanding that the  
22 Court, in its class certification order, defined TPPs as “insurers who paid for/reimbursed the  
23 [Consumer Economic Loss Class] members for their [valsartan-containing drugs] according to  
24 the health care insurance policy of the [Consumer Economic Loss Class] member[.]” Doc. 2261  
25 at 36. Further, it is my understanding that the Court’s definition of TPPs is consistent with  
26 Plaintiffs’ definition of TPPs as “health care benefit providers, such as an employer’s insurance

1 company or a health and welfare benefit plan providing health care benefit to employees or  
2 beneficiaries.” Doc. 1749 at 2. Based my years of experience in the healthcare industry, both as  
3 a senior executive of a health insurer and now senior consultant providing advisory services to  
4 health insurers, both definitions are consistent with what I would expect to be defined as a TPP,  
5 and TPP typically does not mean a pharmacy or drug store.

6 8. As I discuss in more detail below, it is my opinion that the Mailing List contains  
7 zero TPP entries.

#### 8 **DATA SOURCES USED**

9 9. I was provided a copy of the Mailing List by Defendants’ counsel for purposes of  
10 my review and analysis. I understand the Mailing List has been designated “proprietary” and  
11 “Attorneys’ Eyes Only” but was shared with me upon Plaintiffs’ consent.

12 10. The Mailing List is an Excel spreadsheet titled “*Copy of Restricted Confidential -*  
13 *Attorneys Eyes Only - Angeion Third Party Payor Data\_1.xlsx*” consisting of two tabs. The first  
14 tab “Mailing Data” consists of 28,593 rows with the first row containing the following column  
15 headers:

- 16 a. ID
- 17 b. Business Name
- 18 c. Street Address
- 19 d. Street Address 2
- 20 e. City Name
- 21 f. State Province Abbreviation
- 22 g. State Province Name
- 23 h. Postal Code

24 11. The second tab “Email Data” consists of 8,686 rows with the first row containing  
25 the following column headers:

- 26 a. 00ID

b. First Name

c. Last Name

d. Job Title

e. Email

f. Company Name

g. Street Address

h. City

i. State

j. Postal Code

k. County

l. Line of Business

m. Chief Executive Officer Name

n. Validation

o. Untitled Field

12. For my purposes, the format and data elements found on the “Mailing Data” tab were orderly and self-explanatory and did not require any data integrity validations or clarifications before beginning my review. I understood the ID column to be an alpha-numeric, sequential data field for reference purposes ranging from VAL100001 to VAL28592 corresponding to the 28,592 entries in the Mailing List, with “VAL” referring to the present Valsartan litigation.

13. Likewise, the format and data elements found on the “Email Data” tab were orderly and self-explanatory, although an explanation of the Validation field was not provided (all 8,685 entries were marked as “Valid” which I’ve interpreted to mean the email address is valid).

14. In conducting my review, I referenced two publicly available data sources as published by the Centers for Medicare and Medicaid Services (“CMS”) containing TPPs

1 participating in Government Programs (i.e., Medicare Advantage, Cost, PACE, Demonstration  
2 and Prescription Drug Plan) and the Affordable Care Act (“ACA”) marketplace (i.e., primarily  
3 employer-sponsored small group and/or individual ACA market exchange insurance offerings)  
4 during 2015, as a representative sampling of TPPs during the class period, and more recent  
5 periods outside the class period during 2021 and 2023:

6 a. Government Programs - CMS MA/MAPD Enrollment for December 2015,  
7 December 2021 and May 2023<sup>1</sup>

8 b. ACA - CMS Health Plan Finder for Q4 2015 and Q4 2021<sup>2</sup>

9 15. Both CMS data sources contained organization/plan name and product/plan type  
10 with the ACA data also containing organization/plan address. The combined lists contained  
11 nearly 2,000 TPP organizational names, although many organizations appear on both lists and  
12 some parent organizations contain multiple subsidiaries, thereby materially reducing the unique  
13 number of TPPs.

14 16. It is my expectation and belief that the publicly available CMS data sources used  
15 in my analysis do not encompass all or even necessarily a substantial proportion of all reasonably  
16 identifiable TPPs in the TPP Economic Loss Class, particularly given the CMS data sources do  
17 not contain benefit plans. Instead, the publicly available sources can be used to validate whether  
18 the Mailing List is representative of expected members of the TPP class. Put another way, the  
19 publicly available CMS data sources can be used to evaluate whether the Mailing List contains  
20 the names and addresses of a large number of readily identifiable members of the TPP Economic  
21 Loss Class members but are not an adequate substitute for the Mailing List given the limitation

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22 <sup>1</sup> 2015: <https://www.cms.gov/Research-Statistics-Data-and-Systems/Statistics-Trends-and-Reports/MCRAdvPartDENrolData/Monthly-Enrollment-by-Contract-Items/Enrollment-by-Contract-2015-12>  
23 2021: <https://www.cms.gov/research-statistics-data-and-systemsstatistics-trends-and-reportsmcradvpartdenroldata/monthly/enrollment-contract-2021-12>  
24

25 2023: <https://www.cms.gov/research-statistics-data-and-systems/statistics-trends-and-reports/mcradvpartdenroldata/monthly/enrollment-contract-2023-05>

26 <sup>2</sup> 2015: [https://www.cms.gov/CCIIO/Resources/Data-Resources/health\\_plan\\_finder\\_data](https://www.cms.gov/CCIIO/Resources/Data-Resources/health_plan_finder_data)  
2021: <https://www.cms.gov/research-statistics-data-and-systemsstatistics-trends-and-reportsmcradvpartdenroldata/monthly/enrollment-contract-2021-12>

just mentioned, and likely themselves represent only a subset of the total class membership.

## **REVIEW METHODOLOGY**

17. To determine the existence and number of TPPs on the Mailing List, I used a combination of search techniques to attempt to match an entry in the Mailing List to the TPPs listed in the CMS data sources, as follows:

- a. Compare the Business Name field from the Mailing List to the organizational names in the CMS data sources;
- b. Compare the address fields in the Mailing List to the addresses listed in the CMS Health Plan Finder data source (address was not contained in the CMS MA/MAPD Enrollment);
- c. Apply filtering logic to the Mailing List containing key words (“pharm,” “drug,” “Rx,” “apothecary,” “shop,” “store” and/or “prescription”) applicable to pharmacies, drug stores and intermediary entities like PBMs which are not considered members of the TPP Economic Loss Class; and
- d. Perform an overall manual search of the Mailing List for names of national TPPs (e.g., United, Aetna, Humana, etc.) that one would expect to find on any valid list of TPPs.

18. To be considered a valid TPP address, an entry in the Mailing List only needed to match to a TPP from the CMS data sources based on one of the search techniques listed above.

## **FINDINGS**

19. Based on the review methodology outlined above, I found zero matches (i.e., 0%) in the Mailing List on both tabs to the TPPs listed in the CMS data sources. Instead, the Mailing list appears to be comprised entirely of pharmacies and drug stores and their employees. Indeed, of the 28,592 entities listed in the first tab of the Mailing List, nearly 23,000 contain variations of “pharm,” “drug,” “Rx,” “apothecary,” “store” or “prescription” in their names. Another 400+ have the names of excluded Defendants or affiliates, like Walgreens, CVS, and Rite-Aid. Only

1 one entity name contains any variation of “insure” or “insurance,” and it is an insurance agency  
2 and brokerage, not an insurer.

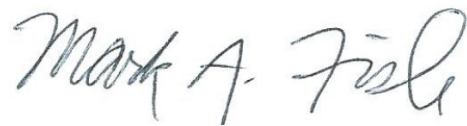
3 20. Likewise, of the 8,685 email addresses in the second tab of the Mailing List,  
4 nearly 4,000 are associated with businesses containing variations of “pharm,” “shop” or “store”  
5 in their names. Another 1,300 are specifically associated with excluded Defendants or affiliates,  
6 like Walgreens, CVS, and Rite-Aid. Further, all 8,685 entries on the “Email Data” tab list “Drug  
7 stores and proprietary stores” as the Line of Business.

8 21. In addition, of the 8,685 email addresses in the “Email Data” tab, nearly 3,000  
9 have titles indicating employment at a pharmacy or drug store or in a health care setting, such as  
10 “pharmacist,” “technician,” “owner,” “nurse,” or “physician.” There are other titles even further  
11 removed from an insurance setting, like “certified specialist of wine” and “liquor establishment  
12 manager.”

13  
14 **I hereby declare that the above statement is true to the best of my knowledge and**  
15 **belief, and that I understand it is made for use as evidence in court and is subject to penalty**  
16 **for perjury.**

17 Executed on May 26, 2023, at Slingerlands, New York.

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Mark A. Fish



# ATTACHMENT 1

**Attachment 1**  
**Curriculum Vitae, Mark Fish, F.S.A., M.A.A.A.**

**FTI Consulting, Inc.**

1166 Avenue of Americas  
15<sup>th</sup> Floor  
New York, NY 10036  
Tel: +1 518 256 7830  
[mark.fish@fticonsulting.com](mailto:mark.fish@fticonsulting.com)

**EDUCATION**

B.S. Business Administration, Actuarial Science  
B.S. Mathematics  
University of Wisconsin

**CERTIFICATIONS**

Fellow, Society of Actuaries  
Member, American Academy of Actuaries  
Certified Managed Care Executive, Association of Health Insurance Plans

**PROFESSIONAL EXPERIENCE**

**FTI Consulting, Inc.**

Senior Managing Director	January 2023 to Present
Managing Director	December 2013 to December 2022

**MVP Health Care**

Executive Vice President, Chief Financial Officer	May 2010 to September 2013
Executive Vice President, Medical Affairs (Interim)	November 2009 to December 2010
Executive Vice President, Network Management	January 2006 to May 2010
Vice President of Finance	September 2003 to January 2006
Vice President of Actuarial & Chief Actuary	March 1999 to September 2003

**Milliman, Inc.**

Consulting Actuary	October 1996 to March 1999
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**Aetna, Inc.**

Actuary	January 1989 to October 1996
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Mark Fish is a Managing Director with FTI Consulting and is based in New York. He is part of the Health Solutions practice focusing on Health Plans, Managed Care and Value Based Transformation. While at FTI, he has assisted numerous clients with actuarial modeling, value-based care initiatives, payment models, ACO development, risk management strategies and managed care contracting. Mr. Fish has 30 years of healthcare industry experience. He has served in various leadership positions in his career in finance, operations, contracting, strategy, analytics, actuarial and risk management.

Prior to joining FTI, Mr. Fish served as the Chief Financial Officer at MVP Health Care, where he was responsible for the oversight of operations with revenue exceeding \$2.5B, an investment portfolio of \$500MM, and an administrative expense budget of \$270MM. He was a member of the Executive Leadership Team and held

executive positions as Chief Actuary, Chief Financial Officer, EVP Network Management and EVP Medical Affairs.

During Mr. Fish's tenure as Chief Financial Officer, MVP reported Net Income of \$100 million over a 3-year period. In addition, he led a \$100 million financial turnaround of MVP's Commercial business and directed a \$57 million (20%) reduction in administrative expenses. He was the executive sponsor for the company's ACA Health Exchange strategy and was responsible for the financial results of MVP's Medicare Advantage and Managed Medicaid government programs and TPA businesses covering 150,000 and 130,000 members, respectively.

As Executive Vice President of Network Management, Mr. Fish had responsibility for MVP's provider network of health systems, hospitals, physicians, IPAs, PHOs and ancillary providers for all lines of business. Under his direction, MVP partnered with CIGNA to offer a national network to its members.

Mr. Fish served as MVP's first in-house Chief Actuary. In his role as Chief Actuary, Mr. Fish had overall responsibility for MVP's \$2 billion premium rate setting process and benefit analysis for Commercial, Self-Insured TPA, Medicare and Medicaid business units, and underwriting support for MVP's experience rated business.

Additionally, Mr. Fish has experience as a Consulting Actuary at Milliman and began his career at Aetna in their actuarial leadership development program.

#### **PUBLICATIONS**

<i>"A Roadmap for Healthcare Convergence"</i>	May 2014
<i>"The Great Divide – How Payers and Physicians View Value Based Arrangements"</i>	September 2014
<i>"COVID-19: Impact on Managed Care Portfolios"</i>	April 2020
<i>"Introducing FTI Consulting's Market Maturity Model for a Risk-Based Ecosystem"</i>	June 2021
<i>"Provider Risk Management is Hard to Do"</i>	December 2021
<i>"Direct-to-Employer Contracting Has Arrived"</i>	April 2022
<i>"No Surprises Act - Financial Implications for Emergency Departments"</i>	April 2022
<i>"Rising Regulatory Scrutiny of RAF Scores"</i>	August 2022
<i>"Anyone Home? Recent Acquisitions by Humana, UnitedHealth Group and CVS Health/Aetna"</i>	November 2022
<i>"2025 Star Ratings Measurement Period is Underway"</i>	February 2023